

Chapter 12 - Miscellaneous

Subpoena Duces Tecum

Overview

A subpoena *duces tecum* orders a person who is not a party to the litigation to produce at the trial any evidence in his possession that is pertinent to the issues of a pending controversy. For issuance of a district court form DC-336, [SUBPOENA DUCES TECUM](#) the clerk's office will:

Require the person requesting the subpoena to complete, under oath, the request portion of a district court form DC-336, [SUBPOENA DUCES TECUM](#) specifying the items to be produced pursuant to Rule 3A:12 of the [Rules of Supreme Court](#). See [Va. Code § 16.1-131](#).

Note date of filing the request and the issuance of the subpoenas *duces tecum*. Rule 7A:12(b) of the [Rules of Supreme Court](#) provides that requests for subpoenas *duces tecum* should be filed at least fifteen days prior to trial.

Complete the remainder of the district court form DC-336, [SUBPOENA DUCES TECUM](#) following the instructions for completing the form in the DISTRICT COURT FORMS MANUAL.

When a subpoena has been served on a non-party requiring the production of information stored in an electronic format, the subject of the subpoena shall produce a tangible copy of the information. If a tangible copy cannot be produced, then that person shall permit the parties to review the information on a computer or by electronic means during normal business hours, provided that the information can be accessed and isolated. If a tangible copy cannot reasonably be produced and the information is commingled with information other than that requested in the subpoena and cannot reasonably be isolated, that person may file a motion for a protective order or a motion to quash.

Subpoena Duces Tecum- Attorney Issued

In any criminal case a subpoena duces tecum may be issued by the attorney of record who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. The subpoena duces tecum shall be on DC-3000, SUBPOENA DUCES TECUM- ATTORNEY ISSUED, signed by the attorney of record, and shall include the attorney's address. A copy of the signed subpoena duces tecum, together with the attorney's certificate of service pursuant to Rule 1:12, shall be mailed or delivered to the adverse party and to the clerk's office of the court in which the case is pending on the day of issuance by the attorney. The law governing subpoenas duces tecum issued pursuant to Rule 3A:12(b) shall apply. A sheriff shall not be required to serve an attorney-issued

subpoena duces tecum that is not issued at least five business days prior to the date production of evidence is desired. When an attorney transmits one or more subpoenas duces tecum to a sheriff to be served in his jurisdiction, the provisions in § 8.01-407 regarding such transmittals shall apply.

If the recipient of a subpoena duces tecum has less than fourteen days following service to comply with the subpoena duces tecum, he or she may serve a written objection on the party issuing the subpoena. Upon proper objection, the issuing party is not entitled to compliance, unless the issuing party moves the court to compel compliance, the issuing party gives notice of this motion to the person to whom the subpoena is directed, and the court grants the motion. If the motion to compel is timely, the court may quash, modify or sustain the subpoena duces tecum.

Subpoenas duces tecum for medical records issued by an attorney shall be subject to the provisions of §§ 8.01-413 and 32.1-127.1:03, except that no separate fee for issuance shall be imposed.

Medical Records

Virginia law protects the privacy of medical records subpoenaed during litigation. These protections apply to both parties and non-party witnesses. Before disclosure occurs, patients whose records are requested must receive notice of the request and must have at least fifteen days to file an objection. Disclosure may occur only after the patient (1) consents to the request (2) fails to object within fifteen days or (3) files a motion to quash which is overruled by a court. These restrictions apply both to attorney-issued subpoenas and requests for the issuance of a subpoena to the clerk of court.

Who Must Be Notified

Unless exempted from provisions of [Va. Code § 32.1-127.1:03 \(H\)](#), a party who subpoenas medical records is subject to heightened notification requirements. When records of a party represented by counsel are subpoenaed, counsel must be notified. When the records of a pro se party or non-party witness are requested, notification must be provided to the person whose health care records are to be provided. The requesting party is also required to transmit notification to the health care provider in possession of the records.

Form of Notification

Notification must include both a copy of the subpoena or request(s) for subpoena and a statutorily required statement outlining the procedures governing requests for medical records. The text of the statement to be provided to the party whose records are requested is specified in [Va. Code § 32.1-127.1:03 \(H\)\(1\)](#). District court form DC-348, [NOTICE TO INDIVIDUAL-](#)

[SUBPOENA DUCES TECUM FOR HEALTH RECORDS](#). The text of the statement to be provided to health care providers is specified in [Va. Code § 32.1-127.1:03 \(H\)\(2\)](#). District court form DC-350, [NOTICE TO HEALTH CARE ENTITIES-SUBPOENA DUCES TECUM FOR HEALTH RECORDS](#).

Return Date

The return date of any subpoena *duces tecum* requesting the disclosure of medical records must be at least thirty days after the “date of the subpoena.” An earlier return date is permissible only if authorized by court order for good cause shown. If the records cannot be provided in thirty days, with written notice of inability to comply, the provider shall have no more than thirty additional days from the date of such written notice to comply.

Transmittal of Records

Either the patient and/or health care provider may move to quash the subpoena. If no motion to quash is filed within thirty days, the requesting party must certify this fact to the health care provider holding the records. The health care provider then has five days or until the return date of the original subpoena to transmit the records, whichever is later. While the statute is not explicit, it seems that, when no objection is filed, the health care provider is to transmit the records to the requesting party. If the health care provider is informed that a motion to quash the subpoena has been filed, the health care provider is required to transmit the records to the clerk of court in a securely sealed envelope, pending adjudication of the motion(s) to quash. When all motions to quash have been adjudicated, the statute charges both the clerk and requesting party with important responsibilities.

Depending upon the resolution of the motion(s) to quash, the clerk must do one of three things:

- If the court determines that no submitted medical records should be disclosed, return all submitted medical records to the provider in a sealed envelope;
- If the court determines that all submitted medical records should be disclosed, provide all the submitted medical records to the party on whose behalf the subpoena was issued; or
- If the court determines that only a portion of the submitted medical records should be disclosed, provide such portion to the

party on whose behalf the subpoena was issued and return the remaining medical records to the provider in a sealed envelope.

While the clerk is responsible for transmitting the records, the requesting party must certify the result of the motion(s) to quash to the health care provider. Depending upon the outcome of the proceeding, five different certifications are possible:

- If all of the requests are upheld and the medical records have previously been delivered to the clerk, the requesting party must certify that none of the records will be returned to the provider.
- If all of the requests are upheld and no medical records have previously been delivered to the court by the provider, the requesting party certifies that the provider must transmit the medical records designated in the subpoena by the return date on the subpoena or five days after receipt of certification, whichever is later.
- If all of the requests are quashed but the requested medical records already have been delivered to the clerk, the requesting party must certify that the records will be returned to the provider.
- If the court determines that only some of the requested records are to be disclosed, the requesting party must certify to the provider, which record(s) are subject to disclosure. If the requested records have previously been transmitted to the clerk, the certification must inform the provider that those medical records previously delivered to the court for which disclosure was authorized will not be returned to the provider; however, all medical records for which disclosure has not been authorized will be returned to the provider.
- If only some of the requested medical records are to be disclosed but those records have already been delivered to the clerk, the requesting party must certify that the provider is to return only those records specified in the certification. The certification should state that the records must be transmitted by the return date on the subpoena or five days after receipt of the certification, whichever is later.

Each type of certification must indicate that the motion(s) to quash have been adjudicated and must include a copy of the court's order or ruling. The requesting party may not transmit certification until all motions to quash have been resolved.

Standards for Adjudicating Motions to Quash

If the patient or health care provider files a motion to quash, the requesting party must demonstrate "good cause" for the disclosure of the records. [Va. Code § 32.1-127.1:03 \(H\)](#). In determining whether good cause has been shown, courts must consider:

(i) the particular purpose for which the evidence was collected (ii) the degree to which the disclosure of the records would embarrass, injure or invade the privacy of the individual (iii) the effect of the disclosure upon the individual's future health (iv) the importance of the information to the law suit or proceeding; and (v) any other relevant factor.

Exceptions to Heightened Notification Requirements

The heightened notification requirements of [Va. Code § 32.1-127.1:03 \(H\)](#) do not apply to requests by a "duly authorized administrative agency." The requirements are also inapplicable when a patient requests medical records from his own healthcare provider pursuant to [Va. Code § 8.01-413](#).

Subpoena *duces tecum* for Financial Records

A subpoena *duces tecum* for the records of a financial institution or credit card issuer that is requested prior to the filing of criminal charges may be granted only by order of court. [Va. Code § 19.2-10.1](#). The court may grant such a subpoena only if it finds probable cause to believe that a crime has been committed and that the records sought are relevant to that offense. Circuit court form CC-1336, SUBPOENA *DUCES TECUM* - FINANCIAL RECORDS has been produced for use in these proceedings.

Service of Process

In General

It has generally been the appropriate sheriff in the district who serves process on the defendant. However, [Va. Code § 8.01-293](#) provides that "[w]henever in this Code the term "officer" or "sheriff" is used to refer to persons authorized to make, return, or do any other act relating to service of process, such term shall be deemed to refer to any person authorized in this section to serve process." This section authorizes any person who is at least eighteen years old and who is not a party or otherwise interested in the case, to serve process.

The sheriff is required to call or go to the clerk's office every day to receive all process and other papers to be served by him. The sheriff may serve process not only in his own political subdivision but also in any contiguous city or county.

A \$12.00 service fee may apply for serving certain processes. Refer to the Sheriff's Fee Chart located in the Quick Reference Materials for a list of these processes.

Service of Process - By Parties and Special Substitute Service Provisions

Below is a synopsis, and description of the return of process, of the statutory provisions governing upon which process may be served - SERVICE OF PROCESS - BY PARTIES and SPECIAL SUBSTITUTE SERVICE PROVISIONS.

Note: These methods of service are listed in order of preference. A "lower" method of service cannot be used unless a preferred method cannot be used.

Natural Person - Virginia resident generally

In person in Virginia

By substituted service:

If not at usual place of abode, then:

deliver the process to a family member found at abode who is at least sixteen years old and is not a temporary sojourner or guest and give this person information regarding the purpose of the process delivered. [Va. Code § 8.01-296](#)

If it is not successful, then by posting on front door or other such door as appears to be the main entrance of such abode; however, at least ten days before entry of default judgment, (1) plaintiff must mail by regular mail to the party served by posted service a copy of the process and certify such mailing to the clerk, or (2) plaintiff in a general district court case can mail a copy of the pleading which contains the date, time and place of the return prior to or after filing such pleading and certify such mailing to the clerk. [Va. §§ 8.01-294 and 8.01-325](#). [Va. Code § 8.01-296 \(2\)\(c\)](#)

Service on the [Secretary of the Commonwealth](#) if process has been delivered to the sheriff or to a disinterested person for execution and, if unable to be served, that the person

seeking service (usually a plaintiff) has made a bona fide attempt to determine the actual place of abode or location of the person to be served. [Va. Code § 8.01-329 \(B\)](#)

By order of publication

- Serving party unable to locate person to be served after exercising due diligence; *or*
- Sheriff unable to serve other party at last known address after having process twenty-one days; *or*
- Other party is unknown. [Va. Code § 8.01-316](#)

Note: The person executing substituted service shall note the manner and date of such service on the original and the copy of the process so delivered or posted. (See By substituted service above.)

Convicts (as defendants)

Service may be affected by delivery to the officer in charge of jail or institution whose duty it is to promptly deliver it to convict. [Va. Code § 8.01-297](#).

Non-resident

- Personal service in Virginia or on the [Secretary of the Commonwealth](#).
- Personal service outside Virginia by person authorized to serve process where person to be served is located in the same provided in Chapter 8 of Title 8.01 ([§ 8.01-285 et seq.](#)). (Personal service on a non-resident outside Virginia is the equivalent of personal service on a non-resident within Virginia, if the “long arm” statute would provide personal jurisdiction.) [Va. Code §§ 8.01-320, 8.01-329](#).
- Order of publication - Posting in three public places for certain liens (innkeepers, garage men, etc.). [Va. Code § 43-34](#).

Government Entities

Cities and towns

On its city or town attorney, if such position exists, otherwise on its mayor, manager or trustee. Service may be made by leaving a copy with the person in charge of the office of any officer designated above. [Va. Code § 8.01-300](#).

Counties - generally

On its County Attorney where such position exists, otherwise, on its Attorney for the Commonwealth. Service may be made by leaving a copy with the person in charge of the office of any officer designated above. [Va. Code § 8.01-300](#).

Against county official or employees

On named defendant plus each supervisor and the County Attorney. If there is no County Attorney, then the clerk of the County Board. [Va. Code § 8.01-300](#).

Virginia Tort Claims Act and Other public governmental entities

On director, chief administrative officer, commissioner, attorney, or member of governing body, or person in charge of office of any above designated official.

Partnerships or Partners

General

On any general partner, except plaintiff-partner. [Va. Code § 8.01-304](#).

Limited

On any general partner; on limited partner only to enforce limited partner's partnership liability. [Va. Code § 8.01-304](#).

Unincorporated Associations, Orders and Common Carriers

Domestic or Foreign

- On any officer, director, trustee, staff member or other agent. [Va. Code § 8.01-305](#).
- Same as above; *or*
- On Clerk of State Corporation Commission, if the association, etc., does business in the Commonwealth; *or*
- Order of publication. [Va. Code § 8.01-306](#).

Corporations

Domestic

- By personal service on any officer, director or registered agent of the corporation; or
- By substituted service on stock corporations in accordance non-stock corporations [Va. Code § 13.1-637](#), [Va. Code § 13.1-836](#), [Va. Code § 8.01-299 \(1\) and \(2\)](#)
- Garnishments, by service on an officer, an employee designated by the corporation other than an officer, or if there is no designated employee or if the designated employee cannot be found, upon a managing employee. A “managing employee” is an employee who has control of operations and supervision of employees at the location where process is served. If the creditor files a certificate that she used due diligence and an officer, designated employee or managing employee cannot be found or the designated or managing employee is the debtor, it may be served on the registered agent or upon the clerk of the State Corporation Commission. If the corporation intends to designate an employee for receipt of service, the corporation shall file the designation with the [State Corporation Commission](#). [Va. Code § 8.01-513](#).

Foreign

- By personal service on any officer, director, or on the registered agent of a foreign corporation authorized to do business in Virginia. If doing business without such authority, then by personal service on any of the corporation’s agents; *or*
- By substitute service if such corporation is authorized to do business in Virginia [Va. Code §§ 13.1-766](#) and [13.1-928](#); *or*
- Where jurisdiction is authorized by substitute service regardless of whether the corporation is authorized to do business in Virginia [Va. Code § 8.01-328.1](#), [Va. Code § 8.01-329](#); *or*
- Where jurisdiction in rem or quasi-in-rem is authorized, by order of publication regardless of whether the corporation is authorized to do business in Virginia. [Va. Code §§ 8.01-316](#) and [8.01-317](#), [Va. Code § 8.01-301 \(1–4\)](#).
- Garnishments, by service on an officer, an employee designated by the corporation other than an officer, or if there is no designated employee or if the designated employee cannot be found, upon a managing employee. If the creditor files a certificate that she used due diligence and an officer, designated employee or managing

employee cannot be found or the designated or managing employee is the debtor, it may be served on the registered agent or upon the clerk of the [State Corporation Commission](#). If the corporation intends to designate an employee for receipt of service, the corporation shall file the designation with the [State Corporation Commission](#). [Va. Code § 8.01-513](#).

Operated by trustees or receivers

- On any trustee or receiver.
- If a trustee or receiver cannot be served, may serve as detailed above for a regular corporation. [Va. Code § 8.01-303](#)
- Stock corporations (domestic and foreign)
- Substitute service on Clerk of [State Corporation Commission](#).
- Order of Publication.
- [Secretary of the Commonwealth](#) (foreign corporations only).

Non-stock foreign corporations

- Substitute service on Clerk of [State Corporation Commission](#) when corporation has no registered agent or agent cannot be found at registered office with due diligence.
- Order of Publication.
- [Secretary of the Commonwealth](#) (foreign corporations only).

Automobile insurers uninsured or underinsured motorist

Same as party defendant except that [Va. Code § 8.01-288](#) does not apply. [Va. Code § 38.2-2206 \(E\)](#).

Auctioneers (non-resident)

Director of [Virginia Auctioneer Board Va. Code § 54.1-603](#)

Automobile tort cases

[Commissioner of Motor Vehicles](#)

Reciprocal insurance

Clerk of the [State Corporation Commission](#)

Non-resident owner and operator of aircraft (tort cases)

[Secretary of the Commonwealth Va. Code § 8.01-309](#)

Public school tax publishers

[Secretary of the Commonwealth](#)

Solicitors of Contributions

[Secretary of the Commonwealth](#)

Virginia Tort Claims Actions

[Attorney General Va. Code § 8.01-195.4](#)

Transportation district

Chairman of the commission of the transportation district. [Va. Code § 8.01-195.4](#)

A return of service must be made in one of the following ways:

- The sheriff must make a return on all processes delivered to him for service of process as required by law within seventy-two hours from the date of service except where the third day would fall on a Saturday, Sunday or legal holiday. The return would then be due on the next business day following the Saturday, Sunday or legal holiday. [Va. Code § 8.01-294](#).
- Proof of service by any person other than the sheriff or deputy sheriff must include an affidavit of his qualifications, the date and manner of service and the name of the party served. [Va. Code § 8.01-325](#).

Unless otherwise directed by the court, the person serving process shall make the return within three days of service, except when the third day would end on a Saturday, Sunday, or legal holiday. In this case, the return would be due the day following the Saturday, Sunday, or legal holiday. [Va. Code § 8.01-325](#). Failure to make the return within that time frame does not invalidate the service. If the court finds that a late return prejudices a party or interferes with the handling of the case by the court, the court may grant a continuance, require additional service, or take other appropriate action.

Further, when service has been executed by substituted service, the date of service shall be noted on the return. [Va. Code § 8.01-296 \(2\)\(c\)](#).

Served Through the Secretary of the Commonwealth

Plaintiff, or his attorney or agent, prepares a district court form DC-410, [AFFIDAVIT FOR SERVICE OF PROCESS ON THE SECRETARY OF THE COMMONWEALTH](#) (two copies), and attaches a copy of the process or notice to each copy of the affidavit. A copy of the affidavit is filed with the clerk of the court.

Plaintiff, his attorney or agent mails to the [Secretary of the Commonwealth](#) the original and one copy of the affidavit for each person to be served with process or notice attached to each copy with the appropriate fee. A green certified mail card for U.S. residents or a pink registered mail card for non-U.S. residents must be included. (While service on the Secretary of the Commonwealth can be made through the sheriff, such service can be slow--the Secretary of the Commonwealth must return all unserved general district court processes received within ten days of the return date. If the service of process is to be served on the Secretary of the Commonwealth by the sheriff, then the clerk also collects the copies of the affidavit and service of process fee from the plaintiff and forwards to the sheriff the copies of the items to be served, the copies of the affidavits and the fee for service of process on the Secretary of the Commonwealth. The clerk does *not* mail these items directly to the Secretary of the Commonwealth).

If timely received, the [Secretary of the Commonwealth](#) sends a copy by certified mail return receipt requested to the person to be served (usually the defendant), then executes the Certificate of Compliance portion of the district court form DC-410, [AFFIDAVIT FOR SERVICE OF PROCESS ON THE SECRETARY OF THE COMMONWEALTH](#) and mails it to the general district court clerk. Service of process is effective on the date when service is made on the Secretary of the Commonwealth. Upon receipt of the certificate of compliance, the clerk mails verification of filing of the certificate with the court to the person filing the affidavit. The clerk shall not mail this verification unless the person filing the affidavit provides the clerk with a self-addressed, stamped envelope. [Va. Code § 8.01-329 \(C\)](#)

Clerk enters the date and time filed on the affidavit (becomes effective date of service) and files affidavit form with completed certificate with the case papers.

Served Through Clerk of SCC, DMV or Other

If served through the Clerk of the [State Corporation Commission](#), the [Commissioner of Motor Vehicles](#), or other statutory agent for service of process, the same procedure used for service of process through the [Secretary of the Commonwealth](#) is used, including the filing of a certificate of compliance, except that:

- an affidavit for service of process is not usually required by statute, and
- different fees for such service of process are set by statute for each such statutory agent, and

- different timetables are statutorily set for each such agent to perform his/her duties.

The plaintiff, not the clerk, is responsible for arranging for timely service through any statutory agent, including the [Secretary of the Commonwealth](#).

Using an Order of Publication

An order of publication is a remedy used to satisfy the service requirement on parties in certain civil cases in the juvenile and domestic relations district courts. “The object ... is to protect parties by giving them notice and an opportunity to present a defense.” *Khanna v. Khanna*, 18 Va. App. 356, 358, 443 S.E.2d 924, 926 (1994).

[Virginia Code § 8.01-316](#) states how and when service by order of publication is available. It may be used when:

- The party to be served is a foreign corporation, a foreign unincorporated association, order, or a foreign unincorporated common carrier, or a nonresident individual, other than a nonresident individual fiduciary who has appointed a statutory agent under [Va. Code § 26-59](#);
- Diligence has been used without effect to ascertain the location of the party to be served;
- The last known residence of the party to be served was in the county or city in which service is sought and that a return has been filed by the sheriff that the process has been in his hand for twenty-one days and that he has been unable to make service;
- The identity of the party or parties is unknown; or
- The number of defendants is greater than ten (10).

[Virginia Code § 8.01-317](#) outlines what should be stated in an order of publication, and how such an order shall be published, including the following criteria:

- The style of the suit,
- A brief statement of its object, and
- The requirement that the defendants or unknown parties appear and protect their interests on or before the date stated in the order.

[Virginia Code § 8.01-317](#) further requires that the order be:

- Published once a week for four consecutive weeks in a newspaper prescribed by the court, or, if not prescribed by the court, one prescribed by the clerk,
- Posted at the front door of the courthouse wherein the court is held, or on the public government website of the locality, or on the website of the circuit court clerk served by the court where such notice, summons, or other official document is posted and
- Mailed to each party and defendant at the last known address provided in the affidavit.

[Virginia Code § 8.01-317](#) also requires that the court date shall be no sooner than fifty days after entry of the order of publication.

Any waiver of publication must be ordered by the court. There is no initial filing fee for an order of publication, but the cost of newspaper publication shall be billed to and paid initially by the party seeking service. However, costs may be recoverable pursuant to [Va. Code § 17.1-601](#).

Clerk’s Procedures for Order of Publication

| STEP | DESCRIPTION |
|------|---|
| 1 | The clerk receives and date stamps the Affidavit and Petition for Order of Publication. This may be either on the district court form DC-435, Affidavit and Petition for Order of Publication or an attorney-drafted petition. It may be filed separately or as an attachment to a petition or motion. It does not receive a separate case number in JCMS. |
| 2 | The clerk prepares the Order of Publication, which can be entered by either the judge or clerk. Use district court form DC-436, ORDER OF PUBLICATION using language from the affidavit, and including the court date and publication dates. Orders of publication shall be published once each week for four consecutive weeks and shall be posted at the front door of the courthouse or on the public government website or on the website of the circuit court clerk of the locality served by the court where such notice, summons, or other official document is posted. NOTE: When posted at the courthouse, the appropriate order is still an order of publication; the information contained therein is “published” in the sense that it is made generally known, communicated or announced officially by posting at the public entrance of the courthouse. |
| 3 | Upon entry of the Order of Publication, the clerk ensures that the scheduled court date is more than fifty days from the entry of the order. |

| STEP | DESCRIPTION |
|------|---|
| | The clerk shall set the case fifty days from the entry of the order even when the court dispenses with publication in a newspaper. |
| 4 | <p>The clerk shall facilitate sending the Order of Publication to the newspaper designated in the order.</p> <p>The newspaper may also require “proof approval” prior to publishing the order. The party requesting the district court form DC-436, ORDER OF PUBLICATION is responsible for making payment arrangements with the newspaper</p> |
| 5 | <p>The clerk shall post a certified copy of the order at the front entrance of the courthouse or post on the public government website or on the website of the circuit court clerk of the locality served by the court where such notice, summons, or other official document is posted, and mail certified copies to all parties and counsel.</p> <p>The clerk should use the FOR COURT USE ONLY portion of the order to document completion of these steps</p> |
| 6 | <p>After the order has run for four weeks, the newspaper should mail the court a certificate of publication.</p> <p>It is the clerk’s responsibility to ensure that this certificate is in the file on the hearing date.</p> |

Forms

- DC-435 [AFFIDAVIT AND PETITION FOR ORDER OF PUBLICATION](#)
- DC-436 ORDER OF PUBLICATION

References

- [Va. Code § 8.01-316](#) Service by publication; when available.
- [Va. Code § 8.01-317](#) What order of publication to state; how published; when publication in newspaper dispensed with.
- [Va. Code § 8.01-318](#) Within what time after publication case tried or heard; no subsequent publication required.
- [Va. Code § 8.01-319](#) Publication of interim notice.
- [Va. Code § 8.01-320](#) Personal Service outside of Virginia.
- [Va. Code § 17.1-601](#) General rule as to recovery of costs on final judgment.

Alternatively, a person for whom service of process is intended may accept service of process by signing the proof of service and indicating the jurisdiction and state where service of process was accepted. [Va. Code § 8.01-327](#).

Unexecuted process should be docketed on the original return date and disposed of accordingly. If the plaintiff applies to the clerk for reissue within three months of the original return date, a new pleading should be completed and marked "Reissue" and assigned the same original case number. While a warrant in debt may be re-issued once during such three-month period without an additional fee if a new address is provided, no such free re-issuance is provided for motions for judgment.

After the case initiation papers are served on a party, all future documents (except in contempt cases) may be served on the attorneys for the parties unless otherwise ordered by the judge.

Service of process within twelve months of commencement of the action shall be timely as to that defendant. Service of process on a defendant more than twelve months after the suit was commenced shall be timely upon a finding by the court that the plaintiff exercised due diligence to have timely service made on the defendant. [Va. Code § 8.01-275.1](#).

Failure to Serve Process

A person, upon whom process has not been served within one year of commencement of the action against him, may make a special appearance, which does not constitute a general appearance, to file a motion to dismiss. Upon finding that the plaintiff DID NOT exercise due diligence to have timely service, and sustaining the motion to dismiss, the court shall dismiss the action with prejudice. Upon finding that the plaintiff DID exercise due diligence to have timely service and denying the motion to dismiss, the court shall require the person filing such motion to file a responsive pleading within twenty-one days of such ruling. The plaintiff shall not be prevented from filing a non-suit under [Va. Code § 8.01-380](#) before the entry of an order granting a motion to dismiss.

Enter such a motion as an administrative hearing-**AH** in the JCMS hearing update screen. The judge should decide whether there should be an actual hearing with the plaintiff in attendance.

Motion to Rehear

Review of disposition orders previously entered by the court may be had to reopen a case and modify or revoke the order as a result of alleged changes in circumstances of the parents, child, or other parties to a case; or the court may review a case and proceed against a person as a result of alleged violations of probation or other conditional sentence considerations.

Procedures for such an action involve:

- Filing a district court form DC-368, [MOTION TO REOPEN \(CRIMINAL/TRAFFIC\)/MOTION TO REHEAR \(CIVIL\)/MOTION FOR NEW TRIAL \(CIVIL\)](#) stating the reason to review the disposition (such as a change of circumstances).
 - [Va. Code § 16.1-133.1](#) A motion to reopen/rehear a conviction of a traffic, criminal or delinquency offense must be filed in the district court, within sixty days of the conviction date.
 - [Va. Code § 8.01-322](#) A motion to reopen/rehear may be filed in a civil matter where the party was served by publication and two years or less has passed since the judgment, decree or order and one year or less since served with a copy of the judgment, decree or order.
 - [Va. Code § 16.1-97.1](#) A motion for a new trial in a civil matter must be made by one of the parties within thirty days after the date of judgment, not including the date of entry of such judgment. A hearing shall be held by the court and the court shall rule on any such motions not later than forty-five days after the date of judgment, not including the date of entry of such judgment.
- If rehearing approved: Service of district court form DC-368, [MOTION TO REOPEN \(CRIMINAL/TRAFFIC\)/MOTION TO REHEAR \(CIVIL\)/MOTION FOR NEW TRIAL \(CIVIL\)](#) on parties including complainant/officer/agency representative.
- Issuing a district court form DC-511, Petition or a district court form DC-529, Detention Order where an alleged violation of the terms of a court order has occurred.
- Filing a district court form DC-511, Petition or district court form DC-635, [MOTION FOR SHOW CAUSE OR CAPIAS](#) or district court form DC-630, [MOTION TO AMEND OR REVIEW ORDER](#), preparing petitions for revocation or modification of probation, protective supervision, or parole status in the same manner as for the original proceedings.

Bond Forfeitures

A bond forfeiture is an action to incur a penalty or become liable for the payment of a sum of money as a consequence of failure to abide by the terms and condition of bail/release. [Va. Code § 19.2-143](#) provides when a person, under a recognizance in a case, either as a party or witness, fails to perform the condition of *appearance*, if it is to appear before a court of record or a district court, the court shall record the default therein, and shall issue a notice of default within five days of the breach of the condition appearance.

Proceedings for the forfeiture of bonds in criminal cases are civil in nature. See [Collins v. Commonwealth](#), 145 Va. 468, 471, 134 S.E. 688, 688-89 (1926) (“While the taking of [a] recognizance [grows] out of a matter criminal in its nature, the execution of the bond and the effort of the Commonwealth to collect a debt due by reason of the forfeiture of the recognizance is a matter purely civil.”); See also [E.P. Heacock v. Commonwealth](#), 228 Va. at 241, 321 S.E.2d at 648.

There is a distinction between a property bail bondsman and a surety bail bondsman.

- Surety bail bondsman:
The surety bail bondsman is an agent of a guaranty, indemnity, fidelity, or security company registered to do business in Virginia. If the court forfeits the bond on which a surety bail bondsman is obligated, the insurance company is liable for the forfeited bond.
- Property bail bondsman:
A property bail bondsman is not an agent of an insurance company. If the court forfeits the bond on which the property bail bondsman is obligated, he or she is personally liable for the debt.

The DC-482 ORDER AND NOTICE OF BOND FORFEITURE is used to forfeit secured recognizances for surety or property bondsman.

The following form is to be used when initiating bond forfeiture:

| | |
|-------------------------------------|---|
| DC-482 | ORDER AND NOTICE OF BOND FORFEITURE |
| Additional forms, if needed: | |
| DC-331 | SURETY'S CAPIAS AND BAILPIECE RELEASE |
| DC-410 | AFFIDAVIT FOR SERVICE OF PROCESS ON THE SECRETARY OF THE COMMONWEALTH |
| DC-451 | GARNISHMENT SUMMONS |
| DC-458 | NOTICE OF SATISFACTION |
| DC-465 | ABSTRACT OF JUDGMENT |

Note: There are no filing fees to be paid for the forfeiture proceedings. DC-482, NOTICE AND ORDER OF BOND FORFEITURE must be issued within 5 days of the breach of the condition of appearance.

Once an individual account has been established on a forfeited bond, after 91 + days, the unpaid account will appear on the Listing of Unpaid Fines and Cost Report (BU51) for collection by the Commonwealth’s Attorney, private collection attorney, or TAX.

Secured Bond

The following procedures are recommended when processing a bond forfeiture for a secured bond in the juvenile and domestic relations district court.

| STEP | DESCRIPTION |
|------|--|
| 1 | <p>Case entry: assign a new adult case number. If an order and notice for bond forfeiture has been issued previously against the insurance company or bondsman use the same base number and the next available document number. Enter case in JCMS using the first listed surety name on the DC-330, RECOGNIZANCE as the defendant. Enter additional defendants in the remarks field. This information is obtained from district court form DC-330, RECOGNIZANCE. It should be the persons and entities listed as sureties and could include the individual bondsperson, the Virginia company, the insurance company.</p> <p>For example, if the bail bondsman is a surety, the defendants should include the insurance company (serve registered agent in Virginia), the bonding company (serve the listed bail bondsman).</p> <p>If the bail bondsman is a property bondsman, the defendants should include the bail bondsman personally, the bonding company (serve the listed bail bondsman).</p> <p>If the surety is a third party, serve the third-party surety.</p> <ul style="list-style-type: none"> • Amount to be forfeited is bond amount. • Court date is set 151 days from the finding of default (date defendant failed to appear). • Complainant is: "Commonwealth of Virginia" (under state code) or • "Locality's Name" (under local code section). • Use case type BF. • Enter Code Section 19.2-143 • Prepare district court form DC-482, ORDER AND NOTICE OF BOND FORFEITURE. <p>Information needed to issue DC-482, ORDER AND NOTICE OF BOND FORFEITURE can be obtained from the DCJS website: https://www.cms.dcjs.virginia.gov/GLSuiteWeb/Clients/VADCJS/Public/IndividualVerification/Search.aspx</p> |

| STEP | DESCRIPTION |
|------|---|
| 2 | <p data-bbox="406 252 941 283">Notice of default is served on all parties.</p> <p data-bbox="406 325 1331 441">Parties may include: Insurance Company and registered agent for the insurance company, bonding company and/or registered agent for the bonding company and surety or sureties.</p> <p data-bbox="406 483 1429 787">If the DC-482, ORDER AND NOTICE OF BOND FORFEITURE is returned not found on any party, the Secretary of the Commonwealth may be served with the notice required by Va. Code § 19.2-143 of the forfeiture hearing when the principal of the bond has failed to appear. Follow the procedure detailed in Va. Code § 8.01-329 (B). There is no fee to the Secretary of the Commonwealth as state agencies and courts do not pay the service fee. It is necessary to send the district court form DC-410, Affidavit for Service of Process on the Secretary of the Commonwealth.</p> <p data-bbox="406 829 1429 1060">For service on the Secretary of the Commonwealth, the court completes the district court form DC-410, Affidavit for Service on the Secretary of the Commonwealth. You may wish to ask the Commonwealth’s Attorney to sign as the party or party’s attorney if the case is a Commonwealth case. You may wish to ask the attorney for the locality to sign for the as the party or party’s attorney if it is a local case. Send the original and one copy.</p> <ul data-bbox="406 1071 1404 1144" style="list-style-type: none"> • Copy of DC-482, ORDER AND NOTICE OF BOND FORFEITURE. • Envelope addressed to the person being served, returnable to the court. <p data-bbox="454 1144 1201 1291">Mail to: Office of the Secretary of the Commonwealth Service of Process Department Post Office Box 2452 Richmond VA 23218</p> <p data-bbox="406 1302 1404 1375">Contact State Corporation Commission if additional information is needed for surety bail bondsman.</p> |
| 3 | <p data-bbox="406 1386 690 1417">Hearing/Disposition:</p> <p data-bbox="406 1417 1396 1564">Hearing is held on or after the 151st day – The Judge determines to which party the default applies (i.e., judge determines whether or not the default judgment is against a licensed bondsman personally in addition to whether the default judgment is against the bonding company).</p> |

| STEP | DESCRIPTION |
|------|--|
| 4 | <p>If judgment is entered, enter BF as the hearing result,</p> <p>If the defendant is brought before the court within 150 days of the findings of default the court shall dismiss the default upon the filing of a motion by the party in default. Update the hearing result as D.</p> <p>NOTE: If the bondsman appears before the hearing date and wishes to pay the bond, set up the Individual Account in FAS under the case number to account 201 or the appropriate primary locality (county/city) revenue code and receipt the payment. Once paid the case may be moved up on the docket to allow the court to dispose of the case, removing it from the pending docket. If the judge discharges the surety from further liability, update JCMS with F in the Hearing Result field and D in the Case Disposition field.</p> |
| 5 | <p>If judgment is entered and defendant/surety (ies) are present to pay the bond, receipt to the case number using 201 or to the appropriate primary locality (county/city) revenue code for the bond amount. Acceptable payment funds are cash or certified check.</p> <p>Enter the date the bond was paid in the remarks field of the bond forfeiture case.</p> <p>Once bond has been paid, no further action is taken.</p> <p>NOTE: Bonds in criminal or juvenile cases are required to be made payable to the county or city in which the case is prosecuted. Neither the Commonwealth nor any town will receive bond forfeiture money.</p> |
| 6 | <p>If judgment is entered and defendant/surety (ies) are not present to pay, set up an individual account in FAS using the DC-482, ORDER AND NOTICE OF BOND FORFEITURE case number.</p> <p>One individual account will be established for the entire bond.</p> <p>ACCT OF: Surety's name FAS type: V (civil) Account Code: 201 or to the appropriate locality (county/city) revenue code Assessed: Amount of bond forfeited. CIVIL INT: Y Interest is assessed at the current rate on a bond forfeiture judgment if ordered by the judge. (If interest is collected, receipt to appropriate local interest revenue code.)</p> <p>Additional Information: Reference all judgment debtors-name/address information.</p> |

| STEP | DESCRIPTION |
|------|---|
| | <p data-bbox="662 254 1349 323">No other JCMS or FAS case will be established for any other defendants on this bond forfeiture Order.</p> <p data-bbox="418 369 1432 636">If the forfeited recognizance is not paid by 4:00 PM on the last day of the 150-day period from the finding of default, the license of any bail bondsman on the bond shall be suspended. At such time, the court shall issue a notice to pay within 10 business days to any employer of such bail bondsman if a property bondsman, utilizing the DC- 224, NOTICE TO PAY. If the forfeiture is not paid within 10 business days of the notice to pay, licenses of the employer of the bail bondsman and agents thereof shall be suspended.</p> <p data-bbox="418 682 1432 793">After 91+ days, the unpaid account will be listed on the Listing of Unpaid Fines and Cost Report (BU51) for collection by the Commonwealth’s Attorney, private collection attorney, or TAX.</p> <p data-bbox="418 840 1432 947">NOTE: Bonds in criminal cases are required to be made payable to the county or city in which the case is prosecuted. Neither the Commonwealth nor any town will receive bond forfeiture money.</p> |
| 7 | <p data-bbox="418 953 1419 1104">Clerk mails a copy of the district court form DC-465, ABSTRACT OF JUDGMENT to each judgment debtor and documents date of mailing on the file copy. Clerk shall promptly file an abstract of such judgment to be docketed by the clerk of the circuit court of the city or county.</p> <p data-bbox="418 1150 1414 1220">Clerk maintains a file copy indicating the date of delivery of all documents to the locality with the case papers.</p> <p data-bbox="418 1266 1378 1335">Place a copy of the district court form DC-465, ABSTRACT OF JUDGMENT in the criminal file.</p> |

| STEP | DESCRIPTION |
|------|---|
| 8 | <p>If the bond is forfeited, and not paid by a professional bail bondsman, once final judgment (151 days after finding of default) is entered, send certified copy of DC-482, ORDER AND NOTICE OF BOND FORFEITURE along with proof of service, as well as copies of the Power of Attorney, and district court form DC-330, RECOGNIZANCE to:</p> <p style="padding-left: 40px;">Dept. of Criminal Justice Services P.O. Box 1300 Richmond, VA 23218 (804) 786-0813 Email: bb@dcjs.virginia.gov Fax: 1-804-786-6344</p> <p>If bond is forfeited and not paid by a surety bondsperson, once final judgment (150 days after finding of default) is entered, send certified copy of DC-482, ORDER AND NOTICE OF BOND FORFEITURE, along with proof of service, as well as copies of the Power of Attorney, and district court form DC-330, RECOGNIZANCE to:</p> <p style="padding-left: 40px;">State Corporation Commission Bureau of Insurance ATT: Linwood G. Bennett, Jr. P. O. Box 1157 Richmond, VA 23218 (804) 371-9465</p> <p>If the surety was a third-party who posted real property and the bond was forfeited to your locality, notify the Commonwealth’s Attorney of the default using the district court form DC-465, ABSTRACT OF JUDGMENT. Va. Code § 19.2-348.</p> |
| 9 | <p>After entering the judgment in general district court and recording in the circuit court, the general district court clerk may issue appropriate process (such as district court form DC-451, Garnishment Summons) to enforce forfeiture as judgment. Va. Code §§ 19.2-143 and 16.1-77.</p> <p>If the amount forfeited exceeds \$25,000 the process is returnable to the district, not circuit, court. The \$25,000 limit shall not apply with respect to cases involving forfeiture of a bond.</p> |

| STEP | DESCRIPTION |
|------|--|
| 10 | <p>If the forfeited bond is paid after sending the abstract of judgment to the local circuit court, the clerk must notify the local circuit court by sending district court form DC-458, Notice of Satisfaction.</p> <p>Clerk will keep a copy with the case papers. The court must notify DCJS or the Bureau of Insurance once a bond has been satisfied using district court form DC-458, Notice of Satisfaction if a copy of the DC-482, ORDER AND NOTICE OF BOND FORFEITURE was sent to DCJS or the Bureau of Insurance.</p> <p>Enter the date the bond was paid in the remarks field of the bond forfeiture case.</p> |

Unsecured Bond

The following procedures are recommended when processing a bond forfeiture for an unsecured bond in the juvenile and domestic relations district court.

| STEP | DESCRIPTION |
|------|---|
| 1 | <p>Case entry: assign a new adult number and enter case in JCMS using the name of the defendant from the underlying criminal case.</p> <ul style="list-style-type: none"> • Amount to be forfeited is bond amount. • Court date is set 151 days from the finding of default (date defendant failed to appear). • Complainant is Commonwealth of Virginia (under state code) or Locality’s Name (under local code section). • Use case type BF. • Enter Code Section 19.2-143. • Prepare district court form DC-482, NOTICE AND ORDER FOR BOND FORFEITURE. |
| 2 | <p>Notice is served on the defendant.</p> |
| 3 | <p>Hearing/Disposition: Hearing is held on or after the 151st day – The default is recorded if the defendant has not been delivered or appeared before the court.</p> |
| 4 | <p>If judgment is entered, enter BF as the hearing result.</p> <p>If the defendant appears before the court within 150 days of the findings of default the court shall dismiss the default upon the filing of a motion by the party in default. Update JCMS with D in the CASE DISP field.</p> |

| STEP | DESCRIPTION |
|------|--|
| 5 | <p>If judgment is entered and defendant is not present to pay, set up a civil individual account in FAS using the civil case number from DC-482, NOTICE AND ORDER FOR BOND FORFEITURE.</p> <p>One individual account is established for the entire bond.</p> <p>ACCT OF: Defendant’s name.</p> <p>FAS type: V (civil)</p> <p>Account Code: 201 or to the appropriate locality (county/city) revenue code</p> <p>Assessed: Amount of bond forfeited and all applicable civil processing fees, except sheriff’s fees.</p> <p>CIVIL INT: Y Interest is assessed at the current rate on a bond forfeiture judgment like any other judgment if ordered by the judge.</p> <p>Additional Information: Court must generate a district court form DC-224 NOTICE TO PAY to be mailed to the debtor.</p> <p>NOTE: Bonds in criminal or juvenile cases are required to be made payable to the county or city in which the case is prosecuted. Neither the Commonwealth nor any town will receive bond forfeiture money</p> |
| 6 | <p>Clerk mails a copy of the district court form, DC-465, ABSTRACT OF JUDGMENT to the defendant and documents date of mailing on the file copy. Clerk shall promptly file an abstract of such judgment to be docketed by the clerk of the circuit court of his city or county.</p> <p>After entering the judgment in general district court and recording in the circuit court, the general district court clerk may issue appropriate process (such as district court form DC-451, Garnishment Summons) to enforce forfeiture as judgment. Va. Code § 19.2-348.</p> <p>If the amount forfeited exceeds \$25,000 the process is returnable to the district, not circuit, court. The \$25,000 limit shall not apply with respect to cases involving forfeiture of a bond. Va. Code §§ 19.2-143 and 16.1-77.</p> |
| 7 | <p>If the forfeited bond is paid after sending abstract of judgment to the local circuit court, the clerk must notify the local circuit court by sending district court form DC-458, Notice of Satisfaction.</p> <p>Clerk will keep a copy with the case papers.</p> <p>Update remarks with the date paid.</p> |

Cash Bond

The following procedures are recommended when processing a bond forfeiture for a cash bond posted in the juvenile and domestic relations court.

| STEP | DESCRIPTION |
|------|---|
| 1 | <p>Defendant is tried in his absence and convicted, add the assessed fines and costs to the FAS individual account.</p> <p>“... any defendant or juvenile who posted a cash bond and failed to appear is tried in his absence and is convicted, the court or judge trying the case shall first apply the cash bond, or so much thereof as may be necessary, to the payment of any fines or costs, or both, adjudged against the defendant or juvenile or imposed by law. Any remaining funds shall be forfeited without further notice.”</p> <p>Enter a journal voucher into FAS using reason code BD to distribute the portion of the bond to satisfy the fines and costs.</p> <p>After this journal voucher has processed overnight, verify the account balance and enter another journal voucher to forfeit the remaining bond using reason code BF crediting 201 or to the appropriate primary locality (county/city) revenue code. Va. Code § 19.2-143.</p> <p>NOTE: Bonds in criminal or juvenile cases are required to be made payable to the county or city in which the case is prosecuted. Neither the Commonwealth nor any town will receive bond forfeiture money.</p> |
| 2 | <p>Defendant fails to appear and is not tried in his absence; the cash bond is forfeited forthwith without further notice.</p> <p>It is not necessary to issue the district court form DC-482, ORDER AND NOTICE OF BOND FORFEITURE.</p> <p>Enter a journal voucher to forfeit the bond using reason code BF crediting 201 or to the appropriate primary locality (county/city) revenue code.</p> |

Appeals

A bond forfeiture may be appealed to the circuit court by noting the appeal in writing within ten days after the date on which the order was entered. [Va. Code § 16.1-106](#). District court form DC-475, NOTICE OF APPEAL - CIVIL may be used for this purpose. The appellant posts an appeal bond, if so ordered by the court, and pays the circuit court writ tax and costs within thirty days from the date of judgment to the general district court

clerk. [Va. Code § 16.1-107](#). The clerk’s office forwards all case-related materials, bond, writ tax, and costs to the circuit court. [Va. Code § 16.1-112](#).

Refunding the Bond

If defendant who posted the cash bond was tried in his absence and convicted, the case bond shall be promptly applied to fines and court costs with the remainder of the bond forfeited to the Locality. However, if a rehearing is granted, the judge may remit all or part of such cash bond not applied to fines/costs and order a refund by the Locality.

If the defendant who posted the cash bond was not tried in his absence, the cash bond shall be promptly forfeited. However, if the defendant appears in court within 60 days of the failure to appear without an order of conviction after the bond is forfeited, the judge may remit all or part of the bond and order a refund by the Locality.

If the defendant appears before or is delivered to the court within 24 months of the findings of default, the court shall remit any bond previously ordered forfeited by the courts, less such costs as the court may direct.

If it is brought to the attention of the court that the defendant or juvenile is incarcerated in another state or country within forty-eight months of the finding of default, the court shall remit any bond previously ordered forfeited. If the defendant or juvenile left the Commonwealth with the permission of the court, the bond shall be remitted without deduction of costs; otherwise, the costs of returning him/her to the Commonwealth shall be deducted from the bond. [Va. Code § 19.2-143](#).

| STEP | DESCRIPTION |
|------|---|
| 1 | <p>Court determines legitimacy of refund.</p> <ul style="list-style-type: none"> • Clerk determines whether the refund comes from the clerk’s office or from the locality. • Clerk may refund the bond <u>only if</u> funds have not transmitted. <p>The Locality shall refund any bonds that have previously been remitted to the locality.</p> |
| 2 | <p>The clerk prepares the following four refund documents for delivery to the Locality:</p> <ul style="list-style-type: none"> • Cover letter on court stationary which includes: <ol style="list-style-type: none"> 1. Clear statement of request; 2. Name of defendant or surety (if bond) and case number if appropriate, and 3. Address of refund recipient (where to send check) • Copy or receipt or journal voucher (adjusting) entry to show funds received; • Copy of court order certified by clerk; and |

| STEP | DESCRIPTION |
|------|---|
| | <ul style="list-style-type: none"> • Copy of Transmittal to Locality |
| 3 | Court mails to appropriate local Treasurer/Director of Finance. |

Time Constraints

The clerk’s office, within five days of the date the defendant failed to appear, shall issue a DC-482, ORDER AND NOTICE OF BOND FORFEITURE.

Bond forfeiture hearing:

- Set first hearing within 151 days after default finding for forfeiture order.
- If the defendant comes or is brought to court within 150 days of the findings of default the court shall dismiss the default upon the filing of a motion by the party in default.
- If defendant who posted the bond was tried in his absence at the criminal hearing, the cash bond shall be promptly forfeited. If the defendant appears in court within 60 days of forfeiture order, the judge may refund all or part of the bond and order a refund by the local Treasurer/Director of Finance. This provision does not apply to a cash bond posted by a third-party surety. See “Refund of Bond.”
- If the defendant appears before or is delivered to the court within 24 months of the findings of default, the judge shall refund all or part of the bond and order a refund by the local Treasurer/Director of Finance, less such costs as the court may direct. The payment of court costs does not apply to a cash bond posted by a third-party surety without due process and written consent of the posting party (see the back of the district court form DC-330, Recognizance).
- If the court is notified within 48 months of default that the Defendant was incarcerated in another state or county, judge shall refund all or part of the bond and order a refund by the local Treasurer/Director of Finance. Again, this provision does not apply to a cash bond posted by a third-party surety.

References:

- [Va. Code § 8.01-329 \(B\)](#) Service of process or notice; service on Secretary of Commonwealth
- [Va. Code § 8.01-457](#) Marking satisfied judgments for Commonwealth; payment by third parties releasing recognizances
- [Va. Code § 16.1-106](#) Appeals from courts not of record
- [Va. Code § 16.1-258](#) Bonds and forfeitures thereof
- [Va. Code § 19.2-128](#) Penalties for failure to appear

[Va. Code § 19.2-143](#)

Where default recorded; process on recognizance; forfeiture on recognizance; when copy may be used; cash bond

[Va. Code § 19.2-145](#)

How penalty remitted

Attorney General Opinion to Harvell dated 12/10/97; Where substituted service of process must be observed because address and social security number of surety on cash bail bond are unknown, Secretary of Commonwealth may be served with notice of forfeiture hearing when criminal defendant, for whom bail bond was posted, has failed to appear. Court may not proceed to claim cash recognizance as abandoned property.

Attorney General Opinion to Cunningham dated 5/29/02 (2002, page 148); Order of remittance does not serve as satisfaction of judgment in general district court; does act as satisfaction of judgment entered on previously forfeited bond under applicable statutes pertaining to judgments filed in circuit courts.

Forms

VIRGINIA: IN THE GENERAL DISTRICT COURT FOR THE
 CITY COUNTY OF _____

IN THE MATTER OF: (COMMONWEALTH OF VIRGINIA/LOCALITY)
 vs.

 Name of Defendant Name of Surety/Sureties

ORDER REFUNDING BOND

This cause came to be heard upon the motion of _____, Surety
 Defendant for refund of the bond posted in the above-styled case heretofore forfeited and paid to the
 Treasurer of Virginia.

It appearing to the court in accordance with § 19.2-145 of the Code of Virginia that the bond of aforesaid
 defendant was forfeited and said defendant was returned:
 within 24 months of finding of default, or
 within sixty (60) days of failure to appear without an order of conviction

or not returned and
 proven to be incarcerated in another state or country within 48 months of the finding of default

It is therefore ADJUDGED, ORDERED and DECREED that said bond, less costs ordered by the court, if any, as
 follows:

COURT DATE:
 CASE NUMBER:
 ORIGINAL BOND POSTED: \$
 COSTS: \$
 AMOUNT REFUNDED: \$

be refunded to:

Surety Defendant
 NAME: NAME:
 ADDRESS: ADDRESS:

The judgment as recorded in the Circuit Court of this jurisdiction is hereby satisfied and released.

ENTERED THIS _____ OF _____, _____.

JUDGE

Unsecured Bond

- C-330, RECOGNIZANCE).

(Court letterhead)

**Department of Accounts
General Accounting
P. O. Box 1971
Richmond, VA 23219**

Attention: General Accounting

This letter is to provide notice of the request for reimbursement of bond forfeited in this court in the amount of:

Case Number _____ Amount \$ _____

In the name of: _____
Requestor/Surety/Defendant

Address of refund recipient

The attached copies are provided for your review:

Certified copy of Court Order
 Copy of Receipt or Journal Voucher
 Copy of Deposit Certificate

The requestor has been notified by this notice that checks are usually processed within 4-6 weeks.

Requestor's signature: _____

Clerk/Deputy Clerk signature: _____

Court General District Juvenile & Domestic Relations

Date: _____

about the filing. If verbal notice is received, the clerk should require the petitioner to provide a copy of the bankruptcy.

NOTE: Fines and costs are only dischargeable on traffic cases. Since juveniles cannot file bankruptcy, in the JDR courts fines and costs are not dischargeable. In addition, GAL fees are not dischargeable. However, the court may not collect any payments on monies due while a bankruptcy case is pending. Upon notice of a bankruptcy case being filed, the court must take steps to ensure that no collection of fines and costs occur. Once the court receives official notice the bankruptcy case has concluded, the court may resume accepting payments and the collection process.

Types of Bankruptcy

Chapter 7

Known as “liquidation”, typically, 70-80% of bankruptcy filings in Virginia are under this chapter. In the normal Chapter 7 case, the Trustee collects the nonexempt property of debtor, converts the property to cash and distributes the cash to creditors pursuant to statutory priorities while the debtor obtains a “discharge” (release) from personal liability of Dischargeable Debts. Discharge is granted in sixty days after the date first set for creditors meetings unless extended by the Court or an objection is filed.

Chapter 11

Generally used by business and individual debtors who do not meet Chapter 13 requirements regarding total debt. This chapter, entitled “Reorganization” contemplates debtor rehabilitation. The Debtor generally retains the assets, makes payments to creditors pursuant to court order approved plan from post-petition earnings and obtains a discharge from all debt not paid pursuant to the plan. Final discharge order can take up to ten years for conclusion.

Chapter 13

Entitled “Adjustment of Debts of an Individual with Regular Income” (assume cure, promise), Chapter 13 is the second most commonly used petition by an individual debtor. A Chapter 13 petition can only be filed by an individual with regular incomes that owes, on the date of the filing of the petition, non-contingent, liquidated, unsecured debts of less than \$100,000 and non-contingent, liquidated, secured debts of less than \$350,000. The debtor retains assets, makes payments to the Trustee through court-approved plan, the Trustee sends payments to creditors, and obtains a discharge from all debt not paid pursuant to the plan. The plan

may only be filed by the debtor and cannot exceed 5 years in length. Creditors accept payments from the Trustee but when the Discharge order is entered at the conclusion of the case (cannot exceed five years), if part of the debt remains, it is discharged and no longer enforceable.

Definitions

- **AUTOMATIC STAY** - When notice of filing of Bankruptcy petition received, the creditor (court to whom fines and costs are owed at the time the bankruptcy petition is filed) must cease enforcement for collection of the debt. Fines and costs debts incurred after the bankruptcy petition filing are not affected by the stay. Interest on fines and costs accrues during the stay.
- **BANKRUPTCY** - The state or condition of one who is unable to pay his debts as they are or become due. A bankruptcy proceeding is civil in nature and is intended to relieve an honest and unfortunate debtor of his debts and permit him to begin his financial life anew.
- **DISCHARGE** - Release (forgiveness) from indebtedness once the bankruptcy court enters an Order of Discharge. Please See the chart below for an explanation of what is dischargeable.
- **PROOF OF CLAIM** - A form telling the bankruptcy court how much a debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor’s claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy was filed.
- **TRUSTEE** - An attorney or someone experienced with business and bankruptcy rules, appointed by the [United States Trustees Office](#) to oversee a bankruptcy case.

Is Fine and/or Cost Dischargeable?

| | CHAPTER 7 | CHAPTER 13 |
|---------------|-----------|------------|
| Criminal Fine | NO | NO |
| Criminal Cost | NO | NO |
| Traffic Fine | NO | NO |
| Traffic Cost | NO | No |

| | CHAPTER 7 | CHAPTER 13 |
|-------------------|-----------|------------|
| Restitution Award | NO | NO |
| Accrued Interest | NO | NO |

Note: It is important to remember that Chapter 13 bankruptcy debts may be discharged only after the debtor successfully completes all payments proposed under the bankruptcy plan. The payment plan could take several years to complete. Until the debtor’s payment plan is completed and certified by the Bankruptcy Court, the judgment remains a viable debt frozen by the bankruptcy court’s automatic stay, and the judgment should not be released. The bankruptcy notice to the court only allows the court to stay collections efforts on the judgment. The court cannot remove the judgment from the court records. If the debt was settled via the bankruptcy proceedings, the debtor must ask the creditor to provide a notice of satisfaction to the court. The court may mark the judgment satisfied if they receive a notice of satisfaction from the creditor or the debtor may file a DC-459, [MOTION FOR JUDGMENT TO BE MARKED SATISFIED](#).

Clerk’s Bankruptcy Procedures

The following procedures are recommended when a Notice of Filing is received.

| STEP | DESCRIPTION |
|--------------------|---|
| 1 | <p>Clerk’s Office receives NOTICE OF FILING OF THE BANKRUPTCY PETITION from the bankruptcy court.</p> <p>Stamp date received and initial.</p> <p>NOTE: Notice does not have to list the court as a creditor for stay of enforcement to be in effect.</p> <p>COMMENTS: Notice may be in the form of a bankruptcy court form notice or the Clerk may be told verbally about the filing by petitioner or petitioner’s counsel. If verbal notice is received, the clerk should require the petitioner to provide a copy of the bankruptcy.</p> <p>Eastern District 703-258-1200 (general info line) Western District 540-857-2391</p> |
| 1 <i>cont’d</i> | |
| 2 | <p>Clerk matches notice to the individual account in the Financial Accounting System (FAS) or Case Management System (JCMS).</p> <p>Clerk should use caution in matching the notice to the individual account or case, relying on the social security number, date of birth or address information to determine the match.</p> |

| STEP | DESCRIPTION |
|-----------------|---|
| | <p>If no match no further action is required. Clerk may retain in an administrative file marked "no match". This is held for 3 years.</p> |
| <p>3</p> | <p>Access the FAS individual account and enter BNK (Bankruptcy) in the ACTION field. This stops collection activity during the bankruptcy period. NOTE: Do not remove amounts owed from the individual account.</p> <p>Select the additional info tab on the individual account and record the name of the Bankruptcy court in which the bankruptcy action has been filed, date of filing, and type of bankruptcy (Chapter 7, 11, or 13).</p> <p>Clerk may not accept any payment for fines/costs or restitution once bankruptcy notice is received. Clerk should instruct individual to contact the bankruptcy court or his/her attorney.</p> <p>All individual accounts containing a BNK action code will print monthly on the BU06 INDIVIDUAL ACCOUNT STATUS REPORT. Refer to the District Court Financial Management System (FAS) User's Guide for information regarding the BU06.</p> |
| <p>4</p> | <p>Recall the account if it has been sent to a collection agent using DC-323, RECALL OF PROCESS. Attach FAS individual account screen prints.</p> <p>If already reported to Tax Set-Off, release the hold on the tax refund through IRMS (Integrated Revenue Management System).</p> |
| <p>5</p> | <p>FOR ACCOUNTS OVER 10 YEARS OLD:</p> <ul style="list-style-type: none"> • Reactivate the individual account from inactive. • Place BNK in the action field. • When the discharge is received, the clerk should remove the BNK and enter OFF in the ACTION field. This allows you to maintain the account but will prevent further collection. You should use OFF for this instance ONLY. <p>COMMENTS: Collection activity cannot be pursued after ten years. However, the debt is not forgiven and the clerk has no authority to "write off" a debt.</p> |
| <p>6</p> | <p>Upon receipt of the order of discharge of dismissal of the case:</p> <p>If the fines and costs are not discharged, collection is enforceable.</p> <p>Clerk should perform the following: Remove BNK from the FAS individual account; Re-enter the applicable action code on the FAS individual account to reinstate collection proceedings (i.e. COL, TAX or COM)</p> |

| STEP | DESCRIPTION |
|---|-------------|
| Fines and costs incurred after the bankruptcy filing are not affected. | |

Forms

Initiating forms are not provided by the clerk’s office.

- DC-323 RECALL OF PROCESS
- DC-453 GARNISHMENT DISPOSITION

Reference(s)

Attorney General Opinion to the Honorable J. L. Warren, Clerk of the Smyth County Circuit Court, dated 10/13/00; *bankruptcy: dischargeable debts*.

Authorization of Medical Treatment of Juveniles

Cases involving requests for court-ordered authorization for medical treatment of juveniles should be initiated on a district court form DC-550, [PETITION REQUESTING AUTHORIZATION FOR MEDICAL TREATMENT OF JUVENILE](#). In emergency situations, this petition may be completed after an oral request has been granted and insufficient time exists for preparation of the petition prior to the issuance of the order; nevertheless, the petition and the appropriate order should always be completed to protect all parties involved in the case. The district court form DC-551, ORDER AUTHORIZING MEDICAL TREATMENT OF JUVENILE is used when parental consent is unobtainable with reasonable promptness or when one or both parents refuse to consent to medical treatment for a juvenile. [Va. Code § 16.1-241 \(D\)](#).

Intellectual Disability

The procedures used in intellectual disability certification proceedings under Title 37.2 are the same for juveniles as for adults, except that only a judge of the juvenile and domestic relations district court or a substitute judge for that court may conduct the certification hearing for a juvenile. Mental illness commitments for juveniles are governed by special provisions in Title 16.1. See “Juvenile Civil Procedures”.

In cases involving a person who is judicially certified as eligible for admission to a training center for persons with intellectual disability, disposition shall be in accordance with the provisions of Chapters 1 and 8 of Title 37.2. A child shall not be committed pursuant to the provisions of Title 37.2 to a maximum-security unit within any state hospital where adults determined to criminally insane reside. [Va. Code § 16.1-278.11](#).

Treatment, Rehabilitation or Other Services

In cases involving petitions filed by or on behalf of a child or such child's parent to obtain treatment, rehabilitation or other services required by law to be provided for such persons in the juvenile court or the circuit court may enter an order in accordance with [Va. Code § 16.1-278](#).

Special Work Permits

In cases involving judicial consent to apply for a work permit for a child, the juvenile court shall enter an order either granting, in whole or in part, consent to such application or withholding such consent as is appropriate to protect the health and welfare of the child. [Va. Code § 16.1-278.13](#).

Petition for Parental Participation

The school board of a jurisdiction may file a petition against the parents or other legal guardian of juvenile for willful failure to participate in efforts to improve the juvenile student's behavior or ensure the student's attendance at school. The court may impose a civil fine and may order the parent or guardian to participate in such programs as the court may order. [Va. Code § 16.1-241.2](#).

The district court form DC-544, ORDER FOR COURT-APPOINTED SPECIAL ADVOCATE (CASA) is designed for appointment of a court-appointed special advocate to provide assistance in the case. It specifies the powers and duties of this appointee. [Va. Code §§ 9.1-153](#), [9.1-154](#), [9.1-155](#), [9.1-156](#), and [9.1-157](#).

Driver's License Ceremony

Drivers under age 18 are required to obtain their operator's licenses through the juvenile and domestic relations district court except persons who hold valid driver's licenses issued by other states. The judge is required by [Va. Code § 46.2-336](#) to issue licenses in a formal, appropriate ceremony in which he stresses the responsibilities incumbent upon drivers. Parents, guardians or other persons standing in loco parentis are also required to attend if the juvenile is under 18 at the time of the licensing ceremony. Individuals over the age of 18 are not required to be accompanied by a parent or guardian. The court should use the district court form DC-565, NOTICE OF PRESENTATION OF DRIVER'S LICENSE to notify the juvenile of the date and time of the ceremony. If the juvenile is attending school out of state, the license may be mailed to him without prior attendance at a ceremony.

Temporary licenses should be collected from juveniles and destroyed or sent to DMV with a cover letter explaining that they are being forwarded to DMV for disposal. Similarly, documentation of licenses collected and destroyed is not required or recommended. It is not required that the court note or account for licenses not collected.

The chief juvenile and domestic relations district court judge may waive the ceremonial requirements for each juvenile and domestic relations district court within the district or order that each juvenile and domestic relations district court within the district conduct such ceremony in an alternative manner. In courts where the ceremony has been waived, the Department shall mail or otherwise deliver the driver's licenses directly to licensees.

Petition for Cancellation of Juvenile's Driver's License

Any custodial parent or guardian of an unemancipated minor may request in writing that DMV cancel the driver's license of that minor. [Va. Code § 46.2-334 \(B\)](#). However, in the case of a minor whose parents have been awarded joint legal custody, both parents must sign the request. If the parents do not agree or if one of the parents is not available, then a parent may petition the juvenile and domestic relations district court for “a determination that the license of the minor be canceled.”

These petitions can be accepted on the district court form DC-511, PETITION. The petition would be filed with the intake office. [Va. Code § 16.1-260](#). It should be considered a juvenile case and would be styled “In re (name of juvenile).” When entering the case into the Case Management System, the clerk is to use the case type “Status Offense/CHINS/Other” (ST). Because it is a disagreement between two custodial parents that prompts this proceeding, the petition should be served on the other parent, as well as on the juvenile. [Va. Code § 16.1-263](#).

[Virginia Code § 46.2-334](#) provides that the parent may petition for a determination of whether the juvenile's license should be canceled. Therefore, the dispositional options are simply whether or not DMV is to be directed to cancel the juvenile's license. There is no provision in the statute for a restricted driver's license or for other options. Despite using the “Status” case type for case classification purposes, the issue in this proceeding does not meet the definition of a “status offense” and, therefore, the dispositional options for a status offense are not applicable. [Va. Code §§ 16.1-228, 16.1-278.6](#). Courts should use the district court form DC-570, ORDER FOR THE DISPOSITION.

If the court determines that the juvenile's license should be canceled, that disposition would be conveyed to DMV by a copy of the court order and not through the interface. Dispositions should be sent to DMV at the following address:

Driver Licensing Work Center
Room 309
Department of Motor Vehicles
P.O. Box 27412
Richmond, VA 23269

To close out the case, the clerk would use the dispositional codes “Dismissed/Denied” (D) or “Granted” (GR).

Sex Offenders and Crimes Against Minors Registry

Every person convicted, including juveniles tried and convicted in the circuit court pursuant to [Va. Code § 16.1-269.1](#), whether sentenced as an adult or juvenile, of an offense which registration is required and every juvenile found delinquent of an offense for which registration is required under subsection G of [Va. Code § 9.1-902](#) shall be required upon conviction to register and reregister with the [Department of State Police](#). The Court shall order the person to provide to the local law enforcement agency of the county or city where he physically resides all information required by the State Police for inclusion in the [Sex Offender and Crimes Against Minors Registry](#). The court shall remand the person to the custody of the local law enforcement agency for the purpose of obtaining the person’s fingerprints and photographs to be used in such registry. [Va. Code § 9.1-903](#).

Juveniles adjudicated delinquent are not generally required to register. However, if a juvenile over the age of thirteen at the time of the offense is adjudicated delinquent of one of the offenses listed in [Va. Code § 9.1-902](#) requiring registration, the court may, in its discretion and upon motion of the attorney for the Commonwealth, find that the circumstances of the offense required offender registration. The Commonwealth’s Attorney may file a motion with the court at any time during which the offender is within the jurisdiction of the court for the offense that is the basis for such motion. In determining whether it is appropriate to require registration, the court shall consider all of the following factors that are relevant to the case:

- The degree to which the delinquent act was committed with the use of force, threat, or intimidation,
- The age and maturity of the complaining witness,
- The age and maturity of the offender,
- The difference in the ages of the complaining witness and the offender,
- The nature of the relationship between the complaining witness and the offender,
- The offender’s prior criminal history,
- Any other aggravating or mitigating factors relevant to the case.

Civil Transports

[Virginia Code § 8.01-410](#). Inmates as witnesses in civil actions. - Whenever any party in a civil action in any circuit court in this Commonwealth requires as a witness in his behalf, an inmate in a state or local correctional facility as defined in [§ 53.1-1](#), the court, on the application of such party or his attorney may, in its discretion and upon consideration of the importance of the personal appearance of the witness and the nature of the offense for which he is imprisoned, issue an order to the Director of the Department of Corrections to deliver such

witness to the sheriff of the jurisdiction of the court issuing the order. If authorized by the court, the clerk of the circuit court or a deputy clerk may issue these orders on behalf of the court. The sheriff shall transport the inmate to the court to testify as such witness, and after he has testified and been released as such witness, the sheriff shall return the witness to the custody of the Department.

If necessary, the sheriff may confine the inmate for the night in any convenient local correctional facility.

Under such rules and regulations as the superintendent of such an institution may prescribe, any party to a civil action in any circuit court in this Commonwealth may take the deposition of an inmate in the facility, which deposition, when taken, may be admissible in evidence as other depositions in civil actions.

The party seeking the testimony of such inmate shall advance a sum sufficient to defray the expenses and compensation of the correctional officers and sheriff, which the court shall tax as other costs.

Decisions under Current Law

District courts have no authority to order transportation in civil cases. The authority to issue prisoner transportation orders in civil cases granted by this section is vested solely in the circuit courts. By expressly granting the specific authority to issue prisoner transportation orders in civil cases in this statute only to the circuit courts, the general assembly intended to exclude the general district courts from the authority to issue prisoner transportation orders in civil cases. *See Commonwealth v. Brown*, 259 Va. 697, 697, 529 S.E.2d 96, (2000)

Exception

Transportation of incarcerated witness: If the presence of a prisoner is essential to the just adjudication and disposition of a petition for termination of parental rights or other matters involving abuse and neglect of the child, the JDR district court judge may issue a district court form DC-354, CUSTODIAL TRANSPORTATION ORDER upon the request of a party or the courts' motion. The order may direct the Director of the [Department of Corrections](#) or the administrator of the state, local or regional correctional institute to deliver such witness to the sheriff of the jurisdiction of the court issuing the order.

Forms

DC-354 CUSTODIAL TRANSPORTATION ORDER

References

- [Va. Code § 8.01-410](#) Inmates as witnesses in civil actions
[Va. Code § 16.1-276.2](#) Transportation orders in certain proceedings